

House Bill 1266

By: Representative Hill of the 180th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to provide for a program of tax refunds for companies creating new tourism attractions; to provide for a short title; to provide for definitions; to provide for legislative findings; to provide for conditions of eligibility and approval; to provide for agreements; to provide for procedures, conditions, and limitations; to provide for powers, duties, and responsibilities of the commissioner of community affairs and the Department of Community Affairs and the governing authorities of counties and municipalities; to provide for powers, duties, and authority of the state revenue commissioner and the Department of Revenue; to provide an exception to the prohibition of political subdivisions to impose certain taxes; to provide for related matters; to repeal conflicting laws; and for other purposes.

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by adding a new article to read as follows:

"ARTICLE 5

48-8-240.

This article shall be known and may be cited as the 'Georgia Tourism Development Act.'

48-8-241.

As used in this article, the term:

(1) 'Agreement' means a tourism attraction agreement entered into pursuant to Code Section 48-8-244 by the Department of Economic Development and an approved company with respect to a tourism attraction.

(2) 'Approved company' means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other entity that

is seeking to undertake a tourism attraction that has been approved by the commissioner pursuant to Code Section 48-8-244 and is approved by the governing authority of the city where the tourism attraction is to be located if within a city or by the governing authority of the county where the tourism attraction is to be located.

(3) 'Commissioner' means the commissioner of economic development.

(4) 'Costs' means any and all costs associated with a tourism attraction, including, but not limited to, the following:

(A) Labor, vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen;

(B) Real and personal property or rights in real and personal property and any costs incidental thereto;

(C) Construction materials and equipment;

(D) Contract bonds and insurance of every kind;

(E) Marketing, legal, planning, architectural, and engineering services, including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction;

(F) The principal of and interest on revenue bonds or other obligations;

(G) Working capital; and

(H) Installation of utilities, including, but not limited to, water, storm water, sewer treatment, storm-water treatment, gas, electricity, cable, and communications.

(5) 'Department' means the Department of Economic Development.

(6) 'Incremental sales and use tax' means all Georgia sales and use tax and all local sales and use tax other than local sales and use tax for educational purposes generated by the tourism attraction above the amount of sales and use taxes generated by the previous use of the property on which the tourism attraction is located.

(7) 'Local tourism project tax' means a tax imposed by a city or county pursuant to Code Section 48-8-245.

(8) 'Revenue commissioner' means the commissioner of revenue.

(9) 'Tourism attraction' means a cultural or historical site or facility; a recreation or entertainment facility; an area of natural phenomenon or scenic beauty; a hotel or a conference center or a combination thereof; a convention center; a race track; a golf course; marinas and water parks; an entertainment destination center and associated retail businesses and all facilities and equipment related to the foregoing, provided that such tourism attraction is approved by the commissioner as provided in Code Section 48-8-244.

48-8-242.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of the state depend in large measure upon the development of tourism in the state; that it is in the best interest of the state to induce the creation of tourism attractions within the state in order to advance the public purposes of relieving unemployment by creating jobs; that the purposes to be accomplished under the provisions of this article are proper governmental and public purposes for which public moneys may be expended; and that the inducement of the creation and expansion of tourism attractions is of paramount importance to the economy of the state, mandating that the provisions of this article be liberally construed and applied in order to advance public purposes.

48-8-243.

(a) In consideration of the execution of the agreement, the approved company shall be granted a sales and use tax refund of the incremental sales and use tax.

(b) The approved company shall have no obligation to refund or otherwise return any amount of this sales and use tax refund to the persons from whom the sales and use tax was collected, with the approved company having the right to use such sales and use tax revenue for any purposes, including, but not limited to, the repayment of any revenue bonds or other obligations issued in connection with the tourism attraction.

(c) The approved company shall receive the refund for a full 20 calendar years commencing upon the completion of the tourism attraction. The year in which the tourism attraction is completed shall not be taken into account.

(d) On or before March 31 of each year during the term of the agreement, the approved company shall file with the department or such other state agencies specified by the commissioner a claim for the refund of the incremental sales and use tax collected by the approved company and remitted during the preceding calendar year.

(e) The department, in consultation with other appropriate state agencies, shall promulgate rules and regulations and require the filing of a refund form designed by the revenue commissioner to reflect the intent of this article.

48-8-244.

(a) An application for a tourism attraction filed with the department shall include marketing plans for the tourism attraction that target individuals who are not residents of the state; a description and location of the tourism attraction; capital and other anticipated expenditures for the tourism attraction and the anticipated sources of funding therefor; the anticipated employment and wages to be paid at the tourism attraction; business plans which indicate the average number of days in a year in which the tourism attraction will

be in operation and open to the public; and the anticipated revenues to be generated by the tourism attraction.

(b) The commissioner may approve the tourism attraction if costs are expected to exceed \$25 million and the commissioner determines that the tourism attraction will have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism attraction will compete directly with existing tourism attractions in the state the number of visitors that will be drawn to the tourism attraction from out of state, and the number of new jobs the tourism attraction will create.

(c) The commissioner may, in consultation with other appropriate state agencies, further establish standards for the filing of an application for and the approval of tourism attractions by the promulgation of administrative regulations.

(d) The commissioner, on behalf of the department, shall enter into an agreement with respect to each approved tourism attraction pursuant to Code Section 48-8-244.

(e) The department, upon final approval of a tourism attraction, shall enter into an agreement containing such terms and provisions deemed appropriate.

48-8-245.

(a) The city where the tourism attraction is to be located if within a city or the county where the tourism attraction is to be located may impose a tourism attraction tax. A tourism attraction tax shall be at a rate of up to 3 percent. Except as to rate, a tourism project tax imposed shall be levied upon all sales at the tourist attraction and shall correspond to the tax imposed by Article 1 of this chapter. The imposition, rate, and duration of the tourism attraction tax shall be determined by resolution or ordinance. No referendum or election shall be required.

(b) The proceeds of the tourism attraction tax may be used to pay the costs of a tourism attraction, including, but not limited to, the repayment of any revenue bonds or other obligations issued in connection with the tourism attraction.

(c) The tourism attraction tax shall be imposed on the first day of the calendar quarter which begins after the authorization of the tax. The tourism attraction tax shall cease to be imposed on the date determined by the authorizing resolution or ordinance.

48-8-246.

(a)(1) The governing authority of a city where a tourism attraction is to be located may deliver or mail a written copy of a resolution of such city governing authority calling for the imposition by the county pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a tourism attraction.

129 (2) Within ten days following the date of delivery of such resolution to the governing
130 authority of such county, the governing authorities of such county and municipality may
131 enter into an intergovernmental contract as authorized by Article IX, Section III of the
132 Constitution which shall specify that the proceeds allocated to the city shall only be
133 expended for the costs of a tourism attraction.

134 (3) Immediately following the entering into of the intergovernmental contract under
135 paragraph (2) of this subsection, the governing authority of such county may select the
136 next practicable date authorized under Code Section 21-2-540 for conducting a special
137 election on the question of imposing such tax under Part 1 of Article 3 of this chapter.
138 The governing authority of such county shall notify the county election superintendent
139 by forwarding to the superintendent a copy of the resolution of the governing authority
140 of such municipality calling for the imposition of the tax in such county. Following
141 receipt of the resolution, the election superintendent shall issue the appropriate call for
142 an election for the purpose of submitting the question of the imposition of the tax to the
143 voters of such county in the manner specified in Code Section 48-8-111. If approved in
144 such referendum, the tax shall be levied and imposed as provided in this Code section and
145 Part 1 of Article 3 of this chapter.

146 (b) If the governing authority of the county takes no action under paragraph (2) or (3) of
147 subsection (a) of this Code section, it shall provide notice thereof by resolution to the
148 governing authority of the city not later than ten days following the date of delivery of such
149 city's resolution to the county under subsection (a) of this Code section. Upon receipt by
150 the governing authority of the city of such county resolution or if timely notice of no action
151 is not provided by the governing authority of the county to the governing authority of the
152 city or if the county referendum is conducted but is not approved by the voters, the
153 governing authority of any city in this state may, subject to the requirement of referendum
154 approval and the other requirements of this article, immediately commence proceedings to
155 seek to impose within the city a special sales and use tax for a limited period of time for
156 the purpose of funding the costs of a tourism attraction. Any tax imposed under this article
157 shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall
158 correspond to the tax imposed by Article 1 of this chapter.

159 48-8-247.

160 (a) A municipal governing authority voting to impose the tourism attraction tax shall
161 notify the municipal election superintendent by forwarding to the superintendent a copy of
162 the resolution or ordinance of the municipal governing authority calling for the imposition
163 of the tourism attraction tax. Such ordinance or resolution shall specify the following:

(1) The maximum period of time of the tax, to be stated in calendar years or calendar quarters and not to exceed five years;

(2) The aggregate maximum costs of the tourism attraction which will be funded from the proceeds of the tax, which aggregate maximum cost shall also be the maximum amount of net proceeds to be raised by the tax; and

(3) If general obligation debt is to be issued in conjunction with the imposition of the tax, as authorized by this article, the principal amount of the debt to be issued, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the municipal election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the city. The municipal election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The municipal election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the legal organ of the county or in a newspaper having general circulation in the city at least equal to that of the legal organ. If general obligation debt is to be issued in conjunction with the imposition of the tax, the notice published by the municipal election superintendent shall also include, in such form as may be specified by the municipal governing authority, the principal amount of the debt, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt. Such publication of notice by the municipal election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot shall have written or printed thereon the following:

'() YES 'Shall a special 1 percent sales and use tax be imposed in _____ for
a period of time not to exceed _____ and for the raising of not
() NO more than \$ _____ for the purpose of funding a tourism attraction?'

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

'If imposition of the tax is approved by the voters, such vote shall also constitute
approval of the issuance of general obligation debt of _____ in the
principal amount of \$ _____ for the above purpose.'

(d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes,' and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in favor of imposing the tax, then the tax shall be imposed as provided in this article. Otherwise, the tax shall not be imposed and the question of imposing the tax shall not again

be submitted to the voters of the city until after 12 months immediately following the month in which the election was held; provided, however, that if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the city on such date. The municipal election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The municipal election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from municipal funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the city; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the city may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the city from the tax authorized by this article. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the city; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the city.

(f) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the municipal governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the city will receive from the tax authorized by this article net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this article shall be payable first from the separate account in which are placed the proceeds received by the city from the tax authorized by this article.

Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the city; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the city.

48-8-248.

(a) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 70 days after the date of the election at which the tax was approved by the voters.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the revenue commissioner determines that the tax will have raised revenues sufficient to provide to the city net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) No city shall impose at any time more than a single 1 percent tax pursuant to this article.

(2) A city in which a tax authorized by this article is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for a reimposition of a tax as authorized by this article upon the termination of the tax then in effect; and a referendum may be held for this purpose while the tax is in effect. Proceedings for such reimposition shall be in the same manner as proceedings for the initial imposition of the tax as provided for in Code Section 48-8-247 and shall be solely within the discretion of the governing authority of the city without regard to any requirement of county participation otherwise specified under subsection (a) of Code Section 48-8-246. Such newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a city is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

48-8-249.

Both the local tourism project tax and the tourism attraction tax shall be exclusively administered and collected by the revenue commissioner for the use and benefit of the county or city imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the revenue commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the revenue commissioner may rely upon a representation by or in behalf of the city or the Secretary of State that such a tax has been validly imposed, and the revenue commissioner and the revenue commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

48-8-250.

Each sales and use tax return remitting local tourism project taxes or tourism attraction taxes shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the revenue commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale.

48-8-251.

The proceeds of the local tourism project taxes and the tourism attraction taxes collected by the revenue commissioner under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) The remaining proceeds of the tax shall be distributed to the governing authority of the city imposing the tax.

48-8-252.

The revenue commissioner and the commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient

307 administration and enforcement of the collection of the local tourism project tax and the
308 tourism attraction tax.

309 48-8-253.

310 The tax authorized by this Article shall be in addition to any other local sales and use tax.

311 The imposition of any other local sales and use tax within a county, city, or special district
312 shall not affect the authority of a city to impose the tax authorized by this article and the
313 imposition of the tax authorized by this article shall not affect the imposition of any
314 otherwise authorized local sales and use tax within the county, city, or special district.

315 48-8-254.

316 The governing authority of the county or city shall maintain a record of each and every
317 tourism attraction and cost for which the proceeds of the local tourism project tax or the
318 tourism attraction tax are used. In each annual audit a schedule shall be included which
319 shows for each ongoing such project the original estimated cost, the current estimated cost
320 if it is not the original estimated cost, amounts expended in prior years, and amounts
321 expended in the current year. The auditor shall verify and test expenditures sufficient to
322 provide assurances that the schedule is fairly presented in relation to the financial
323 statements. The auditor's report on the financial statements shall include an opinion, or
324 disclaimer of opinion, as to whether the schedule is presented fairly in all material respects
325 in relation to the financial statements taken as a whole."

326 **SECTION 2.**

327 Said chapter is further amended in Part 1 of Article 1, relating to general provisions regarding
328 state sales and use taxes, by revising paragraphs (3) and (4) of Code Section 48-8-6, relating
329 to the prohibition of political subdivisions to impose various taxes, as follows:

330 "(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the
331 amount in excess of the initial 1 percent sales and use tax and in the event of a newly
332 imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent
333 sales and use tax; ~~and~~

334 (4) A sales and use tax levied under Article 4 of this chapter; and

335 (5) A sales and use tax levied under Article 5 of this chapter."

336 **SECTION 3.**

337 All laws and parts of laws in conflict with this Act are repealed.